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5 February 1951

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MEMORANDUM FOR: Mr. [redacted]

FROM: Lloyd A. Ray

SUBJECT: USSR Merchant Marine - Case 6342

FACTS

Under the Lend-Lease Agreement between the US and the USSR certain naval and merchant vessels were turned over to the Soviet Union for use by the Soviet Union in World War II. Article V of the Master Agreement provides for the return to the US at the end of the present emergency, as determined by the President of the United States of America, of such defense articles transferred under the Agreement as shall not have been destroyed, lost or consumed and as shall be determined by the President to be useful in the defense of the United States of America or of the Western Hemisphere or to be otherwise of use to the United States.

Despite demand for the return of these vessels, very few have been returned to the US.

There is some question raised as to whether or not the US agreed to sell the merchant vessels to the USSR as shown by the transcript of various conferences held between the two governments.

The legal title to the vessels rests in the State Department of the US as successor to the Lend-Lease Administration. The vessels are operated by the USSR in commerce, and we understand that in some cases they carry cargo belonging to private owners and touch at various ports outside the Soviet bloc.

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Under the laws of the United States, Canada, England, Sweden, The Netherlands, Belgium and probably Italy and France, these vessels, being in the possession of the Soviet Government, could claim sovereign immunity should they be seized through the courts of any of these countries. This does not mean that the court would refuse to issue an attachment or to seize the vessel in rem, in the first instance, but it does mean that upon a claim of sovereign immunity being made by the Soviet Government, the court would refuse to assume jurisdiction and would release the vessel forthwith.

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The leading case in the US is that of Compania Espanola De Navegacion Maritima, S. A. vs. the Spanish S/S Navemar et als - 1938 American Maritime Cases 15 - 303 US 68.

This was a suit in Admiralty by the alleged owner to recover possession of a Spanish merchant vessel. The Spanish Ambassador asked leave to intervene as claimant on the basis of an affidavit of the acting Spanish Consul General suggesting that when the suit was brought the vessel was the property of the Republic of Spain by virtue of an attachment promulgated by the President of the Republic, appropriating the vessel to public use and that it was then in the possession of the Spanish Government. The principal question for decision was whether it was the duty of the court, upon presentation of the suggestion, to dismiss the libel for want of admiralty jurisdiction.

The District Court rendered its decree upon default, directing the marshal to place libellant in possession (1937 A.M.C. 13).

Thereupon the Spanish Ambassador filed a suggestion in the cause, challenging the jurisdiction of the court on the ground that the Navemar was a public vessel of the Republic of Spain, not subject to judicial process of the court, and asking that it direct delivery of the vessel to the Spanish Acting Consul General in New York. The District Court issued its order to show cause why the default should not be opened and the Ambassador permitted to appear specially as claimant of the vessel. After a hearing the District Court denied the application but with leave to the Ambassador to make further application upon fuller presentation of the facts showing the ownership and possession of the vessel by the Spanish Government (1937 A.M.C. 22).

Meanwhile the Department of State had refused to act upon the Spanish Government's claim of possession and ownership, had declined to honor the request of the Ambassador that representations be made in the pending suit by the Attorney General of the US in behalf of the Spanish Government and had advised the Ambassador that his Government was entitled "to appear directly before the court in a case of this character."

A second application by the Spanish Ambassador for leave to appear as a claimant was denied (1937 A.M.C. 27). On appeal, the Circuit Court of Appeals reversed the District Court and ordered the libel to be dismissed (1937 A.M.C. 851). The US Supreme Court granted certiorari, and reversed the decree of the Court of Appeals and directed that the respondent be allowed to intervene for the purpose of asserting the Spanish Government's ownership and right to possession of the vessel. The Supreme Court said: "Admittedly a vessel of a friendly government in its possession and service is a public vessel, even though engaged in the carriage of merchandise for hire, and as such is immune from suit in the courts of

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admiralty of the US. Berizzi Bros. Co. vs. S/S Pesaro, 271 U.S. 562. And in a case such as this it is open to a friendly government to assert that such is the public status of the vessel and to claim her immunity from suit, either through diplomatic channels or, if it chooses, as a claimant in the courts of the US.

"If the claim is recognized and allowed by the executive branch of the Government, it is then the duty of the courts to release the vessel upon appropriate suggestion by the Attorney General of the US, or other officer acting under his direction. Cassius, 2 U.S. 365; Exchange 11 U.S. 116; Pizarro, Fed. Cases No. 11, 199; see Constitution, Law Reports 4 Probate Division 39; compare Ex Parte Muir 254 U.S. 522; Parlement Belge, Law Reports 4 Probate Division 129. - - - - The Department of State having declined to act, the want of admiralty jurisdiction because of the alleged public status of the vessel and the right of the Spanish Government to demand possession of the vessel as owner if it so elected, were appropriate subjects for judicial inquiry upon proof of the matters alleged."

In another case, the San Ricardo, decided by the US Fifth Circuit Court of Appeals, 1938 A.M.C. 1459, a vessel was expropriated from private owners in Mexico while the vessel was physically in Mobile, Alabama. The owner filed a possessory action and the Mexican Government asserted sovereign immunity. The libel was dismissed by the District Court and affirmed by the Court of Appeals, which said: "It is not only permissible, therefore, but reasonable and wise for a sovereign, asserting immunity from jurisdiction in courts of a friendly power, to state that the possession he relies on has a fair and legal basis, is not an act of rapine or spoliation. Certainly a sovereign does not lose his immunity and submit to jurisdiction merely by alleging, in connection with his claim of possession, that he maintains that possession under a claim of right for public use; that the possession is not being merely wrongfully withheld by persons purporting, but having no authority, to act for him. Indeed under the American doctrine that a claim of immunity must be supported by something more than the mere assertion of it, Pesaro, 255 U.S. 216, Attualita, 238 Fed. 909; Carlo Poma 259 Fed. 369; Long vs Tampico 16 Fed. 491; Berizzi Bros. vs. Pesaro 271 U.S. 563; Davis 77 U.S.15; immunity from jurisdiction will be denied a foreign sovereign where the possession relied on was taken or is being maintained in breach of our laws. Santissima Trinidad 20 U.S. 283; Appollon 22 U.S. 362; Appam 243 U.S. 124, and the assertion of the immunity of our own Government when advanced in a suit over a res will be inquired into sufficiently to determine whether the possession is really that of the Government, or is that of some person purporting to be, but in fact not lawfully, acting for it. US vs. Lee 106 U.S. 196; US vs. Jardine 1936 A.M.C. 93, 81 F(2) 745. - - - -.

"We may assume, though, Jupiter No. 1 /1924/ Probate 231; Jupiter

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No. 2 /1925/ Probate 69, and Cristina 59 Lloyd's List, Law Reports 43; all cited with approval in Navemar 303 U.S. 68, seem to me to have greatly shaken what is said about it by appellant, and in some of the American cases, that the distinction between American and English law, is that English law recognizes and concedes immunity from jurisdiction as to vessels upon the mere assertion of a claim by a sovereign power, without proof of possession, while our law requires that proof. This, if it still exists, is the only difference between the two jurisdictions. The difference appellant sees, that under American law, in order to obtain immunity, possession for public use by a friendly foreign power must have begun before the ship entered our ports, though under English law this is not necessary, finds no support whatever in any decided case, English or American."

The law in the US seems well settled as a result of the Navemar case cited above, and it appears that in order to urge sovereign immunity the foreign government may either appeal to the State Department and have the State Department, through the Attorney General of the US, suggest to the court that the foreign government is the owner of the vessel and that jurisdiction should not be assumed, or the Ambassador of the foreign country, or his representative, may personally appeal to the court to decline to exercise jurisdiction, in which case the court may then hear evidence to establish the public ownership of the vessel. See William Simons vs. the S/S Uxmal - 1941 A.M.C. 1640 - 40 F.S. 258; The Ucayali - 1943 A.M.C. 464 - 318 U.S. 578; Application of the USA for a writ of prohibition and/or mandamus against The Honorable Francis G. Caffey, Judge of the District Court of the US for the Southern District of New York - 1944 A.M.C. 439, in which case a US naval vessel lend-leased to the British Government and enrolled in the British Navy, flying the British naval ensign and manned by a British navy crew, came into collision with an American merchant vessel, whose owner, alleging damage by negligent navigation, filed a libel against the US under the Public Vessels Act, electing to proceed on in rem principles, and where the Circuit Court of Appeals, reversing the District Court, held that the action could not be maintained, since the vessel, on becoming a British public vessel, ceased to be a public vessel of the US, when control of her passed out of the US.

The Janko (The Norsktank) 1944 A.M.C. 659 - 54 F.S. 240-241 (two cases Here a vessel was attached by the US Marshal under a possessory libel. A special appearance was made by the Kingdom of Norway urging sovereign immunity. The libellant, a Panamanian corporation, alleged ownership of the vessel. The vessel was seized in the Netherlands West Indies in a prize court proceeding and subsequently transferred physically by the Kingdom of the Netherlands to the Kingdom of Norway. The court granted the motion to dismiss and, after stating the facts, said: "From the foregoing it is the contention of the claimant that this court, on the basis of such letter with the documents referred to (letter from US Secretary of State declaring that the State Department recognized the claim of the Norwegian Government) should recognize the claim of the Kingdom of Norway and hold the vessel immune from judicial process. In opposition it is asserted

that though the vessel was before the seizure under the process of this court, in possession of the Kingdom of Norway the ownership is not in the Kingdom of Norway but in the libellant. Accordingly the libellant contends that, as a matter of law the suggestion of immunity is insufficient. The practice followed is, of course, sanctioned by established authority, Ex Parte Muir 254 U.S. 522 and Ex Parte Republic of Peru 318 U.S. 578. Immunity from seizure of a public vessel of a friendly sovereign nation is historic doctrine in international law. The Exchange, 7 Cranch 116. See also The Navemar 303 U.S. 68.

"And it is also accepted law in this country that though the immunity arose from the consideration first of public vessels, such as war ships, it was extended to include ships operated by a foreign government in the carriage of merchandise for hire, Berizzi Bros. Co. vs. Pesaro, 271 U.S. 562. The Janko falls within the broad classification indicated since for more than two years prior to its seizure by libellant the vessel had been in continuous possession of the Kingdom of Norway, having been put at the disposition of such government by the Kingdom of the Netherlands, and was engaged in the transportation of oil in the allied cause, and was armed with fixed guns including anti-aircraft guns which were served by members of the Royal Norwegian Navy.

"Thus immunity arose both because of the public character and use of the vessel and its possession by a friendly foreign sovereign. Ex Parte Republic of Peru 318 U.S. 578.

"Whether to constitute immunity the foreign government must show both ownership and possession of the vessel attached does not seem to have been the subject of decision, for insistence always was on the issue of possession. The Cristina, 59 Lloyd's List, Law Reports 43-50, to which reference is made in the Navemar case, 303 U.S. 68, in the note, at page 76. There it is said, 'The judgment in The Cristina appears to have proceeded on that ground' (i.e., that the possession taken in behalf of the claimant government was actual).

"In the Cristina case Lord Atkin observed: 'But the present case is not one of control for public purposes but of actual possession for public purposes. It is indistinguishable from the Gagara /1919/ The Law Reports, Probate Division 95, which in the Court of Appeal was decided solely on the ground that the ship was in the actual possession of a foreign sovereign - namely the State of Estonia.'

"And Lord Wright in the same case observed, referring to the republican government of Spain: 'The respondent government does not contend that it is the owner of the Cristina but says that it is and was at all material times in de facto possession of the Cristina - - - -. This, though not ownership, is, it is said, a right in the ship in the nature of property and was, as being the property of an independent sovereign state, immune from the interference of a court.'

"Later on in his opinion he states: 'The crucial fact in this connection is simply that de facto possession was enjoyed by the Spanish Government.'

"And the following passage in Lord Wright's opinion is of particular interest in view of the criticism leveled by the libellant at the Prize Court seizure by the Dutch West Indian Government: 'It is unnecessary to consider by what mode the respondent (i.e., the Spanish Government) obtained possession. It is enough to ascertain that it had possession at the time when the claim to immunity was made.'

"Doubtless the assumption must be that when a friendly foreign government represents that it is in possession of a public vessel used in the public service, such possession and use are lawful. Comity would not permit in the present cause an exploration as to whether the seizure of the Janko by the Dutch Prize Court was lawful. Comity binds the courts as well as the diplomatic channels - - - -.

"The courts of the United States will not sit in judgment on the acts of another government done within its own territory. See American Banana Co. vs. United Fruit Co. 213 U.S. 347; Oetjen vs. Central Leather Co. 246 U.S. 297; Banco de Espana vs. Federal Reserve Bank 114 Fed.(2) 438."

In Mexico vs. Hoffman 324 U.S. 30, the US Supreme Court said: "In the absence of recognition of the claimed immunity by the political branch of the Government, the courts may decide for themselves whether all the requisites of immunity exist."

In The Batory, 1940 A.M.C. 81 (Supreme Court of the Dominion of Canada), the libellant, an Italian shipyard, was the builder of the M/S Batory and held a mortgage granted under the laws of Poland. While the ship was in Halifax, Nova Scotia, libellant claimed default in payment of mortgage installments and contended that if the ship left Halifax their security might be lost and that she should be detained on such terms and conditions as may be just. An ex parte interlocutory injunction was granted on October 24, 1939 and dissolved on December 5, 1939. It developed during the argument of the injunction that the vessel had been chartered by the British Admiralty. That raised a new question: whether in that situation - and whatever libellant's rights might be - an injunction should now be granted by the Court. The Court said: "Property of the Government, while in its possession and employed in or devoted to the public service, is exempt from judicial process; and the exemption extends not only to property owned by, but also to property such as a ship under charter to, or employed by, the Crown. Jupiter (1924) P.D. 236.

"The exemption is the same whether she is under charter to the Crown or requisitioned by the Crown; and is the same whether the charter is to, or the employment by, the British Government or our own or any ally (Messicano, [1916] 32 T.L.R. 519), and it is effective as long as she remains in such service. Broadmayne [1916] 32 T.L.R. 304; Parlement Belge, 5 P.D. 197.

"It was, however, suggested that the charter might be abandoned. In view of that possibility and in the circumstances of this case, an injunction should be granted restraining removal of the ship on private business but so as in no way to interfere with the control of the ship by the Admiralty or anyone acting on behalf or under the direction of the Admiralty, nor so long as she remains in any service of the Crown."

The Cristina, decided by the House of Lords in 1938, 60 Lloyd's List, Law Reports 147 A Spanish vessel, the Cristina, while in Cardiff, was requisitioned by the Spanish Loyalist Government. The owner (a Spanish corporation) filed a possessory action in order to recover possession of the ship, which was then in possession of a captain appointed by the Spanish Consul in Cardiff. The Spanish Government pleaded sovereign immunity. Lord Atkin said, page 157: "It is well established that the Court will not arrest a ship which is under the control of a sovereign by reason of requisition. The Broadmayne /1916/ Probate 64; the Messicano, 32 The Law Reports 519 and the Crimdon, 35 The Law Reports 81."

Lord Maugham said, at page 168: "It is not in doubt that an action in personam against a foreign government will not be entertained in our Courts unless that government submits to the jurisdiction. The rule was founded on the independence and dignity of the foreign government or sovereign - - - -. This immunity, be it noted, has been admitted in all civilized countries on similar principles and with nearly the same limits. It had been by implication admitted in this country by the statute 7 Anne, Cap. 12, passed in consequence of the taking of the Russian Ambassador from his coach and his imprisonment under the old law by a private suitor. The statute has always been regarded as merely declaratory of the common law."

After discussing various international conferences with reference to disdaining sovereign immunity in the case of commercial vessels owned by governments, Lord Maugham said: "It must not be supposed that all the countries attending the conferences I have referred to were bound by their municipal laws to grant the immunity in question. There is no doubt that the practice as to the immunity of State-owned merchant ships has been and still is far from uniform (Oppenheim, Volume 1, page 669). France and Belgium, for example, grant only a limited immunity, and Italy no immunity at all. I have not been able to ascertain the position taken up by Spain. The Soviet Republic has apparently adopted the admirable practice of owning its merchant ships through limited companies, and does not claim - even if it could, which for my part I should doubt - any immunity whatever in relation to such ships."

(Note: Despite Lord Maugham's statement, it appears to me that the Soviet Union does assert sovereign immunity in the case of its own vessels as will be shown later on - L.A.R.)

The Jupiter /1924/ 19 Lloyd's List, Law Reports 325 This was a possessory action in rem by a French company, claiming to be the owner of the S/S Jupiter. The USSR appeared and asked the Court to decline to take jurisdiction on the grounds of sovereign immunity. The Court dismissed the possessory action on the ground that it could not entertain suit where title was claimed by a foreign sovereign.

The Gagara - Court of Appeal /1919/ The Law Reports, Probate Division 95 This was an action brought in rem by the West Russian Steam-Ship Company, Ltd. against the S/S Gagara, now sailing under the name of the Kajok, and the parties interested in the ship. The libellants alleged that they were the owners of the ship. A motion was made in the Admiralty Court to set aside the writ and all subsequent proceedings. The vessel had been nationalized by the Bolsheviks of Russia and sent on a voyage to Copenhagen. It touched at Reval and was seized by the Estonians under a prize decree. When the vessel arrived in London the present action was filed. The Provisional Government of Estonia was recognized by the UK and their representatives entered an appearance under protest and asked that the writ be set aside on the ground that the Estonian Government was the owner of the ship, and therefore the Court had no jurisdiction, or if it had it ought in its discretion to refuse to entertain the suit. The Court, affirming the decision of Hill, J., held that such provisional recognition accorded, for the time being, to the Estonian National Council the status of a foreign sovereign; that to permit the arrest of the vessel would be contrary to principles of international comity, as it would compel the Estonian Government,whose sovereignty was entitled to be respected, to submit to the jurisdiction of the British Courts. Bankes, L.J., said: "If it has been so recognized (as a sovereign) it is not disputed that the Courts of this country would not allow that Council (the Estonian National Council) to be impleaded in any of these courts. The principle upon which that practice proceeds was laid down in the case of The Parlement Belge (1880) 5 Probate Division 197, 214, and the passage I am going to read is quoted by Lord Esher in the case of Mighell vs. Sultan of Johore (1894) 1 Queen's Bench 149, 159: 'The principle to be deduced from all these cases is that, as a consequence of the absolute independence of every sovereign authority, and of the international comity which induces every sovereign state to respect the independence and dignity of every other sovereign state, each and every one declines to exercise by means of its Courts any of its territorial jurisdiction over the person of any sovereign or ambassador of any other state, or over the public property of any state which is destined to public use or over the property of any ambassador, though such sovereign, ambassador or property be within its territory, and therefore, but for the common agreement, subject to its jurisdiction.'"

The following quotation from Wheaton on International Law, Volume 1, Page 241, is of interest: "But the English Courts have pressed exemption to the furthermost limit, see Cia Mercantil Argentina vs. US Shipping Board (1924), 93 Law Journal, King's Bench (C.A.) 816; The Jupiter (1924) Probate 236. A maritime lien which has arisen when a vessel is Government-owned cannot be enforced even after the vessel has passed into private hands.

The Tervaete /1922/ Probate (C.A.) 259; 91 Law Journal Probate 213; The Sylvan Arrow /1923/ Probate 14; 92 Law Journal Probate 23.

"France denies immunity to commercial vessels, but concedes exemption from attachment and execution. The Hungerfora (1919) 32 Revue Internationale du Droit Maritime 345; The Englewood ibid 602 and The Glenridge ibid 509. Similar is Belgian practice, 34 Revue Internationale du Droit Maritime 20. Italy allows even execution, 15 Clunet (Journal du droit international) (1888) 289. Egypt through the Mixed Court of Appeal appears to follow France. The Sumatra, 33 Revue Internationale du Droit Maritime 167."

On page 243 Wheaton says: "If a foreign sovereign himself institutes a suit in the local court, he thereby submits to its jurisdiction as regards all matters relating to the suit; and therefore the court may put him in terms, and order all proceedings to be stayed, unless he complies with its terms. Thus the French courts would not allow the US to sue certain shipbuilders for fitting out privateers for the Confederate States until that Government had deposited 150,000 francs as security for costs."

In Asiatic Petroleum Corporation vs. Ragusin, decided by the Appellate Court in Brazil, February 7, 1941, reported in 136 Revista de Direito 356, the Brazilian Court dismissed an objection to the jurisdiction on the ground that the Brazilian Court had jurisdiction, saying: "A foreign ship anchored in a Brazilian port is subject to Brazilian jurisdiction." However, in this case no question of sovereign immunity was involved, and we are unable to determine what the Brazilian law is where sovereign immunity is raised.

In the case of The Bank of the Netherlands vs. (1) The State Trust Arktikugol (Moscow), (2) The Trade Delegation of the USSR in Germany (Berlin), (3) The State Bank of the USSR (Moscow), decided by the Court of Appeal of Amsterdam on April 29, 1943, reported Lauterpacht 1943-45, Case No. 26, Page 101 the Court said: "In pursuance of a contract of sale by Nespico (Netherlands Spitzbergen Company) of its coal mines on Spitzbergen to Arktikugol (State Trust for the mining and sale of coal and other minerals of the islands and coast of the Northern Polar Sea, established at Moscow), the latter drew a bill of exchange, dated July 9, 1932, to the amount of the purchase money in favor of Nespico, on the Trade Delegation of the USSR in Germany, payable on July 1, 1941 through the Rotterdam Bank at Rotterdam. The bill was warranted by a 'letter of guarantie,' under date of July 10, 1932, of the State Bank of the USSR (Moscow), which undertook to honor the bill, in case of protest for non-payment by the drawee, within seven days of the presentation of the draft and the protest to the Garantie-und Kreditbank für den Osten (Berlin). The bill was endorsed by Nespico to the Bank of the Netherlands on June 27, 1941, which presented the same for payment and had, indeed, the bill protested for non-payment on July 2, 1941. On July 8, 1941 the draft and the protest were unsuccessfully presented to the Garantie-und Kreditbank für den Osten, the offices

being closed. Since then no payment has been made. On December 3, 1941, the District Court of Amsterdam, by judgment by default, declared itself incompetent to take cognizance of the claim and lifted the distraints which the claimant had levied, on the ground that the USSR had possessed itself of the entire foreign trade, banking and industry of Russia, so that the defendants were public bodies whose fields of activity constitute part of the activities of the State and whose actions are Government actions, with regard to which a foreign court has no jurisdiction."

Held: That the Court had jurisdiction in regard to Arktikugol, but had no jurisdiction with regard to the Trade Delegation and The State Bank, for the following reasons:

"Arktikugol The claim rested on a contract of sale, made between Arktikugol and Nespico, by Article 10 of which it was stipulated that Nespico was entitled to assert its claims based on the contract solely against Arktikugol and not against the Government of the USSR, its representatives or any other organ of that Government. From this stipulation it followed that Arktikugol could not be considered an official organ of the USSR.

"Trade Delegation and State Bank The thesis of the appellant, that the appellate parties under (2) and (3) were independent bodies, vested with a juridical personality of their own, did not necessarily exclude that they were at the same time organs of the USSR, the less so as, pursuant to the contract of sale of 1932, the contractual restriction of Nespico's claims against Arktikugol did not apply to guarantees which might be given by the USSR, her representatives, or other organs for the payment of bills of exchange to be drawn by Arktikugol. Moreover, the nature of the actions of the appellate parties under (2) and (3),viz. the acceptance and the guarantee of the drafts, drawn by Arktikugol in payment of the mines situated on foreign territory - did not mean that these parties, which were to be identified with the Russian State, acted in a private capacity."

Russian Trade Delegation and Others vs. Carlbom (No. 2), Supreme Court of Sweden, April 13, 1944, reported in Lauterpacht 1943-45, Case No. 31, Page 112. This was an application for the execution of a judgment of the Court of Stockholm. Gubkov, the Keskus and the Soviet Trade Delegation in Stockholm appealed to the Higher Administration of Execution in Stockholm on the ground that the Soviet Union was entitled to immunity as a sovereign state. The Administrator dismissed the appeal. The Svea Court of Appeal upheld the decree of the Administrator. On further appeal, the Supreme Court held that the judgment of the Court of Appeal must be reversed. The Court said: "The S/S Toomas was, when the execution was made, in the possession of the Soviet Union, and the Soviet Union has objected to the execution on the ground of its right to immunity. Certainly, the ship cannot (as the Court has found in its judgment in Case No. 15) be considered as the property of the Soviet Union, but this fact does not in

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itself prevent the Soviet Union from enjoying, because of its possession of the ship, immunity from execution. The seizure concerns the execution of a judgment whereby Linkvest, as master of the S/S Toomas, has been enjoined to pay certain sums out of the ship. This judgment, however, was given in a case in which the Soviet Union - which, at the time when the action was brought before the courts, had already for its part dismissed Linkvest from his engagement on board - neither appeared nor was entitled to appear. The claims relied upon, and which the Soviet Union has contested, cannot in the circumstances, be recovered out of the ship in virtue of the law regarding foreign State-owned ships. The circumstances before the Court do not permit any other conclusion than that, in view of its possession of the ship, the Soviet Union is entitled to immunity."

In discussing the question of sovereign immunity, the following appears in Oppenheim's International Law, Volume 1, Seventh Edition Lauterpacht, Page 767: "A British Court of Law will not exercise jurisdiction over a ship which is the property of a foreign State, whether she is actually engaged in the public service or is being used in the ordinary way of a shipowner's business, as, for instance, being let out under a charter party; nor can any maritime lien attach, even in suspense, to such a ship so as to be enforceable against it if and when it is transferred into private ownership. The Tervaete [1922] Probate 259.

"Ships which are not the property of a foreign State, but are chartered or requisitioned by it or otherwise in its possession and control, may not be arrested by process of the Admiralty Court while subject to such possession and control, The Messicano [1916] 32 The Law Reports 519; nor (it need hardly be stated) will any action lie against the foreign state; nor can any maritime lien attach to the ship in respect of damage done by her or salvage services rendered to her while she was subject to such possession and control, The Sylvan Arrow [1923] Probate 220; but when the governmental possession and control cease to operate and she is redelivered to her owner an action in personam will lie. While Great Britain and the US still adhere to the practice of not withholding jurisdictional immunities from State-owned ships engaged in commerce a number of States have now ratified the Brussels Convention of 1926 which abolishes that privilege as between the contracting parties."

(As far as I have been able to determine the USSR has not ratified the Brussels Convention.)

While Wheaton states that France and Belgium deny immunity to commercial vessels, but concede exemption from attachment and execution, I am unable to check the references, as I am unable to locate the "Revue Internationale du Droit Maritime." I am inclined to believe that Belgium will recognize sovereign immunity when pleaded. This is based on my recollection of reading a summary of a Belgian case wherein a Belgian court refused to assume jurisdiction of a case against the US Shipping Board on the ground that it was a branch of the US Government.

According to Wheaton, Italy not only will not recognize a plea of sovereign immunity, but allows execution. However, the reference in Wheaton is to "15 Clunet," which is based on the law as it existed in 1888. Italy has in recent years, subsequent to World War II, adopted a new code of laws, and according to the best information which I am able to develop, the new Italian code recognizes the law of the flag as applying in those cases where there is no specific contract. I am unable to tell, however, from the meager references to the Italian law whether or not a plea of sovereign immunity would be recognized.

CONCLUSION

I am of the opinion that, regardless of the type of action filed against any of the ships now in the possession of the USSR, the libellant will be met by a claim of sovereign immunity. While the question of procedure to be followed by the USSR in urging such sovereign immunity would probably vary in different countries, there is no doubt that in England and probably in all English possessions, the procedure would be very similar to that in the US; that is, the Executive Branch of the Government would be called upon to advise the court that the USSR, a friendly nation, was in possession of the vessel and therefore entitled to sovereign immunity.

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If I can be of any further assistance or if you have any further specific questions, do not hesitate to call on me.

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* The more so to bring suit against the U.S. as possible owners, not to have U.S. claim an interest and initiate the claim, which could be done without any label by us.

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(SENDER WILL CIRCLE CLASSIFICATION TOP AND BOTTOM)

CENTRAL INTELLIGENCE AGENCY

OFFICIAL ROUTING SLIP

LS-357

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1	Office of Operations		
2	Attn.: Mr. Larry Houston General Counsel	LPH/mll	15 Feb 57
3			
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FROM		INITIALS	DATE
1	25X1A [redacted]	Lak	
2	[redacted]		
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☐ CONCURRENCE ☐ RECOMMENDATION ☐ FILE

REMARKS:

Sent to Mr. 25X1A [redacted] 15 Feb 57

Returned to OGC - 23 Feb 57

Given to 25X1A [redacted] for file by LPH

cc to [redacted] 22 Feb 57, 24 Feb 57

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